IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE R.SUBHASH REDDY**

WRIT PETITION NO : 1652 of 1999

Between:

1. Arungolam Subramanyam Reddy S/o Munaswamy Reddy
2. Arungolam Krishna Reddy S/o Subramanyam Reddy
3. Arungolam Gopal Reddy S/o Subramanyam Reddy

..... PETITIONERS

AND

1. The Special Commissioner, Land Revenue , A.P.Hyderabad
2. The Joint Collector, Chittor
3. The Revenue Divisional Officer, Puttur Mandal, Chittor district
4. The Mandal Revenue Officer, Puttur Mandal
5. Smt.J.Yellamma w/o J.Venkataiah.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Certiorari, calling for the records relating to the issuance of the proceedings No. BC W3/1486/98 dated 28-12-1998., confirming the proceedings dated 07-08-1998 in D.Dis.No.B2/1877/98 passed by the Joint Collector, Chittor and after perusing the same quash the proceedings by declaring it as arbitrary and contrary to law.

For the Petitioners: MR.V.JAGAPATHI, Advocate

For the Respondent No.5: MR.C.MOHAN PRAKASH

The Court Made the Following :

**ORAL ORDER**

The writ petition is filed questioning the order dated 07-08-1998 in proceedings D.Dis.No.B2/1877/98 passed by the Joint Collector, Chittor and further orders of the revisional authority i.e., Special Commissioner, Land Revenue, Andhra Pradesh, Hyderabad in proceedings No. BC W3/1486/98 dated 28-12-1998.

An extent of Ac.5.00 of land in Sy.No.13/4 of Nesanur village of Puttur Mandal, Chittor District was assigned to fifth respondent. Subsequently, on the report of the Mandal Revenue Officer, Puttur Mandal, Chittor District, proceedings were initiated to cancel the assignment. The report of the Mandal Revenue Officer is to the effect that the land was assigned to one J.Yellamma-fifth respondent herein on 29-08-1975, by granting D.K.T Patta No. 6-4-85 without any condition, even though cart track is in existence from the above said land. In the report, it is stated that the actual extent of land is Ac.4.46 cents and out of Ac.4.46 cents, an extent of Ac.3.47 cents was in possession of fifth respondent and Ac.0.80 cents was in possession of first petitioner and Ac.0.09 cents was covered by cart track.

Based on the said report, final orders were passed canceling the assignment made in favour of the fifth respondent. But during inquiry in cancellation proceedings, when it came to light that an extent of Ac.0.80 cents was purchased by the first petitioner, a finding is recorded to the effect that the said purchase made by the first petitioner is in contravention of the provisions of A.P. Assign Land Prohibitions Transfer Act, 1977(Act No. 9/77) and in the said order, the second respondent ordered for eviction of the first petitioner and to restore the said land to the assignee. As against the said order, the petitioners preferred an appeal/revision before the Special Commissioner, Land Revenue, Hyderabad, who rejected the appeal/revision stating that the purchase claimed by the first petitioner is in contravention of the provisions of Act 9/1977.

Further, the appellate authority had confirmed the order of the primary authority on the ground that the petitioners had already availed one appeal and no further remedy is provided.

It is the case of petitioners that the order passed by the Joint Collector dated 07-08-1998 is without notice and inquiry to their knowledge. It is their case that in the proceedings for cancellation of assignment, no finding should have been recorded against the petitioners on the ground that the first petitioner purchased the land in question to the extent of Ac.0.80 cents in contravention of the provisions of Act 9 of 1977. It is further the case of petitioners that they were in longstanding possession and developed the land and the order of the Joint Collector is in violation of the principles of natural justice.

It is submitted that even the appellate authority has not considered the appeal in proper perspective and dismissed the appeal misconstruing the facts, on the premise that the petitioners have already availed one remedy of appeal, which is not correct.

In the counter affidavit, it is stated that cart track is in existence from the assigned land and mistakenly, without noting the same, patta was granted; as such, proceedings were initiated to cancel the same. Further, it is stated that the purchase of Ac 0.80 cents of land as claimed by the petitioner is in contravention of the provisions of Act 9 of 1977.

It is to be seen, extent of Ac.5.00 was assigned in favour of the fifth respondent in the year 1975 and DKT patta was granted to the petitioner on 29-8-1975. Proceedings were initiated before the Joint Collector, pursuant to the report of the Mandal Revenue Officer, on the ground that there is existence of cart track from the land in question. In the said proceedings, when it came to light that the extent of Ac.0.80 cents from the assigned land was purchased by the petitioner, the said authority without conducting any enquiry and without issuing prior notice to the petitioner, has declared that the purchase claimed by the petitioner is in contravention of the provisions of Act 9 of 1977 and ordered for restoration of the land to the assignee. Even the appellate authority has dismissed the appeal recording a finding that the purchase by the petitioner is in contravention of the provisions of Act 9 of 1977 and also on the ground that the petitioners have already availed one remedy of appeal ; as such, second

appeal is not maintainable.

If any assigned land is transferred in contravention of the provisions under Act 9 of 1977, the competent authority is entitled to enquire into the matter, as per the provisions of the Act 9 of 1977. It is to be seen, under the Act 9 of 1977, Mandal Revenue Officer is the primary authority, and, Revenue Divisional Officer and Joint Collector are the appellate and revisional authorities respectively. In the instant case, no proceedings are initiated against the petitioner as per the procedure contemplated under the Act 9 of 1977. In the proceedings initiated to cancel the assignment made in favour of the fifth respondent, the very same authority has recorded the finding declaring transfer in favour of the petitioner as illegal. The petitioner was not the party to the said proceedings and no enquiry is conducted by issuing prior notice to the petitioners. Though the petitioners have raised valid grounds before the appellate authority, even the appellate authority has not considered the appeal in proper perspective and dismissed the appeal at the admission stage. The Special Commissioner of Land Revenue has also rejected the revision on the premise that the petitioners have already availed one appeal remedy; as such, they are not entitled for further remedy. But, in fact---------- and there was no appeal preferred by the petitioners to any other authorities as recorded by the appellate authority. Inasmuch as the impugned orders are passed not by the authority competent as per the procedure under the Act 9 of 1977 and also the said orders are passed in violation of principles of natural justice, the order dated 7-8-1998 is liable to be set aside.

In that view of the matter, the order of the Joint Collector dated 07-08-1998 in proceedings D.Dis.No.B2/1877/98 and the order of the appellate authority dated 28-12-1998 in proceedings No. BC W3/1486/98 canceling the patta to the extent of Ac.0.80 cents claiming to be purchased by the first petitioner from the fifth respondent is set aside.

Accordingly, the writ petition is allowed. No costs.

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JUSTICE R. SUBHASH REDDY

To

1.

2. The Special Commissioner, Land Revenue , A.P.Hyderabad

3. The Joint Collector, Chittor

4. The Revenue Divisional Officer, Puttur Mandal, Chittor district

5. The Mandal Revenue Officer, Puttur Mandal, Chittoor Dist

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